



June 11, 2002

Mr. J. Robert Giddings  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2002-3141

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164225.

The University of Texas Southwestern Medical Center (the "medical center") received a request for information related to a complaint filed against the requestor, and information related to a grievance filed by the requestor. You advise that you will release the disciplinary letter resulting from the requestor's grievance. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the identities and statements of the alleged victim and witnesses contained in the investigation of allegations of sexual harassment, which is submitted as Tab B, are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common-law right to privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. – El Paso 1992, writ denied), the court applied the common-law right to privacy to an investigation of allegations of sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* In accordance with *Ellen*, with respect to investigations of sexual harassment, this office typically has required the release of a document analogous to the conclusions of the board of inquiry in *Ellen*, but has held that a governmental body must withhold both the identities of victims and witnesses of alleged sexual harassment and any information that would tend to identify such a victim or witness. See also Open Records Decision Nos. 393 (1983), 339 (1982).

Upon review of the submitted information, we conclude that the marked document constitutes an adequate summary of the investigation into the relevant allegations. We believe that the release of this summary serves the legitimate public interest in the harassment allegations. Based on *Ellen*, however, the medical center must withhold the identities of most of the witnesses, which we have marked, from the information that must be released. Although *Ellen* generally requires that the identities of victims and witnesses be excepted from disclosure, in this instance, the alleged victim and two of the witnesses were disciplined for conduct related to the allegations. Therefore, we find that the identities of these individuals are not protected under common-law privacy because there is a legitimate public interest in this information under these circumstances. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common law right of privacy).

Further, the identity of the individual accused of sexual harassment is not protected from public disclosure, as common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about the employee's job performance. See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). Therefore, the accused's statement is not protected under common-law privacy, with the exception of the marked witnesses' identities. Because the redacted investigation summary adequately serves the public interest in the information at issue, we further conclude that the victim and witness statements contained in the submitted information and the additional related documents are excepted from disclosure under section 552.101 in conjunction with

the common-law right to privacy. After reviewing the information in the investigation submitted as Tab C, however, we find that none of it is protected by the common-law right to privacy under section 552.101.

We now address your claim under section 552.111 for the remaining information in Tab B and for Tab C. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

The submitted documents relate to internal personnel matters. Therefore, we conclude that none of the information in Tab B that is not protected by common-law privacy, and none of the information in Tab C is excepted from disclosure under section 552.111.

However, Tab C contains some information that must be withheld. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who make a timely request that this information be kept confidential under section 552.024. Gov't Code § 552.117(1); *see id.* § 552.024. Whether information is protected under section 552.117(1) must be determined as of the time the information was requested. Open Records Decision No. 530 at 5 (1989). Thus, if the employee whose home telephone and social security numbers we have marked elected under section 552.024, prior to the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. If no timely election under section 552.024 was made, then you may not withhold this information under section 552.117 of the Government Code, and it is subject to release. The pager numbers we have marked are excepted under section 552.117 only if the pagers were purchased and privately owned by the employees and they made timely elections under section 552.024. *See* Open Records Decision No. 506 at 5-6 (1988) (predecessor to section 552.117 does not apply to cellular phone numbers paid for by county and intended for use at *work* for county business). We note that the submitted information contains the home telephone number and social security number of the requestor. Section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that

is protected from disclosure by laws intended to protect the person's privacy interest. Therefore, the medical center must release the requestor's social security number and home telephone number.

We note that social security numbers that are not otherwise excepted from disclosure under section 552.117 might nevertheless be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers that we have marked are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the medical center should ensure that it did not obtain or maintain the social security numbers pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, the information in Tab C contains a personal e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." *See* Gov't Code § 552.137(a). As there is no indication that the individual to whom the e-mail address belongs has consented to its release, the medical center must withhold the e-mail address that we have marked under section 552.137 of the Government Code. *See* Gov't Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

In summary, you must release the investigative summary and the accused's statement contained in the sexual harassment investigation, with the marked information redacted. You must withhold the remaining information in Tab B under section 552.101. The home telephone and social security numbers of an employee that we have marked in Tab C must be withheld under section 552.117 if the employee made a timely election under section 552.024. The marked pager numbers must be withheld under section 552.117 if the employees made such an election and the pagers were privately purchased and owned. Even if not confidential under section 552.117, the marked social security numbers may be confidential under section 552.101 and federal law. The e-mail address that we have marked must be withheld under section 552.137. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

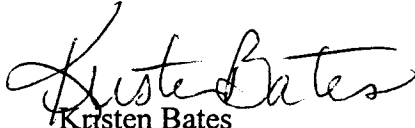
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 164225

Enc. Submitted documents

c: Mr. Gary Moredock  
1937 Valley View Drive  
Cedar Hill, Texas 75104  
(w/o enclosures)